IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.224/1996
Reserved on.19.7.2007
Decided on.26.7.2007

Narinder Singh and another **…Appellants.**

Versus

Raj Singh and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the appellants : **Mr. K.D. Sood, Advocate**

For the respondents **Mr. R.K. Sharma, Advocate.**

Rajiv Sharma, J.

The present second appeal has been directed against the judgment and decree dated 30.4.1996 passed by the District Judge, Chamba, Division Chamba in Civil Appeal No. 9 of 1993.

The brief facts necessary for the adjudication of this second appeal are that the appellant-plaintiffs (hereinafter referred to as the plaintiffs for convenience sake) had filed a suit for prohibitory and mandatory injunction for giving direction to the defendants to remove the obstacle caused by thorny bushes, stacking stones etc. over the passage comprising khasra No. 517, which leads to the house and fields of the plaintiffs and proforma defendants comprising of khasra No. 553 and 519 situate in Mohal Sarol Pargana Rajnagar, Tehsil and District Chamba, H.P. The plaintiffs have alleged in the plaint that there existed a path over khasra No. 517 measuring 0-7 biswas which leads to the house and fields of plaintiffs

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

located on khasra No. 519 measuring 8 bighas 19 biswas and khasra No. 553 measuring 15 bighas. It is further alleged in the plaint that the defendants No.1 to 4 in the month of May, 1991 had blocked the passage by planting thorny bushes and also by throwing and stacking stones etc. causing inconvenience to the plaintiffs.

The defendants No.1 to 4 had contested the suit by filing written statement and had raised preliminary objections to the effect firstly that the plaintiffs were estopped from filing the present suit on account of their act and conduct, secondly that the plaintiffs have no locus standi to file the suit, thirdly that the suit of the plaintiffs was not maintainable in the present form and fourthly that the suit of the plaintiffs was bad for non-joinder of necessary parties.

The trial court on the basis of the pleadings of the parties had framed the following issues on 21.3.1992:

1. **"Whether defendants No.1 to 4, have encroached upon the path-comprised under khasra No. 517 and blocked the same, leading to the house and fields of the plaintiffs, as alleged? OPP.**
2. **Whether the plaintiffs are estopped to file the present suit by their act and conduct as alleged? OPD**
3. **Whether the plaintiffs have no locus standi to file the present suit as alleged? OPD**
4. **Whether the suit of the plaintiffs is not maintainable in the present form as alleged? OPD**
5. **Whether the suit of the plaintiffs is bad for non-joinder of necessary parties as alleged? OPD**
6. **Relief"**

The findings recorded by the trial court on the basis of the issues framed are as under:

Issue No.1 Yes

Issue No.2 No.

Issue No.3 No.
Issue No.4 No.
Issue No.5 No.
Issue No.6 Suit is decreed as per the operative portion of the judgment.

The trial had decreed the suit with costs and defendants No.1 to 4 were directed to remove the thorny bushes and stones from the disputed path (*Share-Aam* land) measuring 7 biswas comprised in khasra No. 517 within the period of one month. Feeling aggrieved by the judgment and decree passed by the trial court dated 27.5.1993, the defendants filed an appeal before the District Judge, Chamba. The District Judge, Chamba had framed the following points for determination:

1. **"Whether the findings recorded by the learned trial court under the impugned judgment and decree dated 27.5.1993, require to be interfered with?**
2. **Final order."**

The District Judge had recorded the following findings on the aforesaid points:

Point No.1 Yes.

Point No.2 Appeal allowed per operative part of the judgment.

The appeal was allowed by the District Judge on 30.4.1996.

The Court had admitted the second appeal on the following substantial questions of law:

1. **Whether the findings of the court in view of the report of the Local Commissioner which was not disputed by the defendants when they had caused obstruction and raised kitchen garden on the part of the suit land and had enclosed the same with hedge and blocked the same and also dug pit of five ft. for discharge of water, are sustainable and on the basis of the same clear cut**

case for grant of relief prayed for was made out which has been wrongly denied to the plaintiff?

2. **Whether in the facts and circumstances of the case, the court was justified in denying the relief of injunction for removal of the path only on the report of the local commissioner that the plaintiff had constructed a house long time back portion of which is also on the path?**
3. **Whether the judgment of the District Judge is sustainable in law inasmuch as it does not examine the material and evidence on record and has solely relied upon the report of the local commissioner which clearly proved the case of the plaintiff for removal of the obstruction on the path.**
4. **Whether the District Judge was right in denying relief of injunction to the plaintiff in the facts and circumstances of the case."**

Since all these questions are inter-connected, therefore, can be conveniently discussed together.

Mr. K.D. Sood, Advocate had strenuously argued that the judgment and decree passed by the appellate court on 30.4.1996 are not sustainable and the judgment and decree of the trial court dated 27.5.1993 be restored.

Mr. R.K. Sharma, Advocate had supported the judgment and decree 30.4.1996 passed by the District Judge.

I have heard the learned counsel for the parties and perused the record.

The parties had agreed for the appointment of local commissioner to ascertain whether there was any obstruction caused by the defendants in the path or not. The local commissioner had visited the spot on 29.10.1995 and had made the following observations:

1. **"I visited the spot in presence of appellants namely S/Sh. Raj Singh, Hem Singh, Parkash Singh and Smt. Premi, sons**

and widow of late Sh. Chaman Singh and respondents Sh. Mohinder Singh, Smt. Kesri alongwith their counsel Sh. H.N. Sharma, Advocate and Patwari Halqua Haripur Sh. Abdul Bashir etc.

2. **That after due confirmation of Abadi Deh bearing Khasra No. 553 and from main road the path i.e. Gair Mumkin Rasta bearing Khata Khatoni No. 232 min/303 min, Khasra No. 517 area measuring 0-7 Bighas was measured properly in the presence above said persons and came to this conclusion as per spot:**
    a. **That there is some construction of houses by both the parties on the some area of khasra No. 517.**
    b. **That there is one kitchen Garden on the part of khasra No. 517 Gair Mumkin Rasta towards last end of this khasra No. i.e. towards house of respondents, by the respondents and the same was covered with wooden hedge.**
    c. **That there is timber wood stacked along with this kitchen garden which is approximately 10/11 ft. in length and 6.1/2 ft. in breadth covering almost whole of the path except 1.1/2 ft. path only.**
    d. **That in between kitchen garden and staged wood there is one 5 ft. diameter pit in the khasra No. 517 in which the discharge of water from kitchen on first floor of respondents old house falls from a pipe extending 4 ft. towards above said khasra No.'**
    e. **That there is no other obstruction on the said khasra No. except mentioned above."**

The local commissioner Sh. Pankaj Sauhta, Advocate had visited the spot in the presence of appellants, namely, Raj Singh, Hem Singh, Parkash Singh and Smt. Premi, sons and widow of late Sh. Chaman Singh and respondents Sh. Mohinder Singh and Smt. Kesari. The local commissioner had recorded that both the parties had raised construction on khasra No. 517 and there was one kitchen garden also on khasra No. 517 Gair Mumkin Rasta towards the last end of this khasra i.e. towards

the house of the respondents and the same was covered with wooden hedge. The appellants had not filed any objection to the report of the local commissioner, who visited the spot on 29.10.1995. The appellate court on the basis of the report of the local commissioner had come to the conclusion that both the parties had raised construction on the disputed land. The District Judge while considering the report of the local commissioner had given correct finding that there was no obstruction caused on the suit path at the time of visit by the local commissioner. Accordingly the District Judge had declined to grant equitable discretionary relief of injunction to the plaintiffs. The report of the local commissioner prima facie constitutes evidence which can be acted upon by court of law. The Court can only interfere with the report if convincing evidence contra is available before the Court. The question whether the path was obstructed or not by the defendants is a question of fact. The Court will not interfere with the finding of the fact recorded by the appellate court on the basis of the report of the Local Commissioner. There is no substantial question of law involved in the second appeal.

As a result the second appeal is dismissed. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 26, 2007
Awasthi